

AFTER-HOURS ESTABLISHMENTS



From Scottsdale City Code

Notice to Taxpayers

This booklet incorporates sections of a City of Scottsdale Code as they relate to After-Hours Establishments.

It is our hope that this booklet will assist you in understanding the licensing law.

For additional information or clarification please call (480) 312-2400.

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Chapter 16
LICENSES, TAXATION AND MISCELLANEOUS BUSINESS
REGULATIONS

ARTICLE XVIII. AFTER-HOURS ESTABLISHMENTS

SEC. 16-574. PURPOSE.

The council recognizes that some activities which occur in connection with after-hours establishments generate secondary effects which are detrimental to the public safety and welfare. Due to these detrimental secondary effects, strict regulation of after-hours establishment business practices and methods of operation are necessary. This article is not intended to interfere with legitimate business operations.

SEC. 16-575. APPLICABILITY, PROVISIONS CUMULATIVE.

- (a) The provisions of this article shall apply to all after-hours establishments. Except that after-hours establishments existing as of the date this ordinance becomes effective may continue to operate, but must secure a license pursuant to the provisions of this article within sixty (60) days from the date this ordinance becomes effective.
- (b) The provisions of this article are in addition to any other regulations, privilege or license taxes or permit requirements required by the city, the state or other agencies and are cumulative to any other applicable regulations, procedures or penalties.

SEC. 16-576. DEFINITIONS.

For the purpose of this article, the following terms shall have the meanings ascribed to them in this section unless the context clearly requires otherwise:

After-hours activity means any activity which occurs at an after-hours establishment;

After-hours establishment means any business which is open to patrons during the hours of 1:00 a.m. to 6:00 a.m. which is the business premises of a state on-sale retail liquor licensee and where dancing or live entertainment may occur. The term includes the building, pavilion or other place where after-hours activity takes place, together with all surrounding premises used for parking or surrounding premises used for any other purpose relating to the after-hours establishment;

Business owner means the legal owner of an after-hours establishment;

Control means the power to direct or cause the direction of the management and policies of an applicant, licensee or controlling person, whether through the ownership of voting securities or a partnership interest, or by agreement or otherwise. Control is presumed to exist if a person has the direct or indirect ownership of or power to vote ten percent (10%) or more of the outstanding voting securities of the applicant, licensee or controlling person or to control in any manner the election of one or more of the directors of the applicant, licensee or controlling person. For the purposes of determining the percentage of voting securities owned, controlled or held by a person, the voting securities of any other person directly or indirectly controlling, controlled by or under common control with the other person, or by an officer, partner, employee or agent of the person or by a spouse, parent or child of the person. Control is also presumed to exist if a creditor of the applicant, licensee or controlling person holds a beneficial

interest in fifty percent (50%) or more of the liabilities of the licensee or controlling person;

Controlling person means a person directly or indirectly possessing control of an applicant or licensee;

Director means the Customer Service Director of the City of Scottsdale or the director's designee;

Licensee means a person, or person representing a corporation, partnership or other entity which has been issued an after-hours license;

Live entertainment means a use which includes but is not limited to disc jockey, live bands, comedians, theater for the performing arts and other forms of entertainment which include live performances at a commercial establishment, provided that the following shall not be considered live entertainment for the purposes of this ordinance: (1) entertainment, performances, or activities provided by businesses regulated under Scottsdale Revised Code, Chapter 16, Article VII, sexually oriented businesses; (2) incidental modeling of clothing and/or singing by employees of the establishment.

Managing agent means the individual(s) responsible for managing the premises during after-hours activities;

Property owner means the owner of record, as shown by the records in the office of the county assessor, of the premises where an after-hours establishment is located;

Person means any individual, firm, corporation, partnership, company, association, business trust, government entity, and any other form of multiple organization;

Premises of a state on-sale retailer liquor licensee means any area from which a person holding any state on-sale retailer liquor license or a special event liquor license is authorized to sell, dispense or serve spirituous liquor;

Security plan means a written statement by the licensee explaining how the licensed premises and parking lots used by patrons of the after-hours establishment will be secured. The plan will include but not be limited to: security procedures, the number of security personnel, including off-duty police officers working while the business is open, their assignment and duty post, and any other information required by the director or police department.

SEC. 16-577. LICENSE REQUIRED.

- (a) It is unlawful for any person to own, manage, operate or provide an after-hours activity or an after-hours establishment without first obtaining and maintaining in effect an after hours establishment license as required by this article.
- (b) It is unlawful for any person licensed as provided in this article to operate under any name or conduct business under any designation or location not specified in the license.

SEC. 16-578. APPLICATION.

- (a) Any person desiring to obtain an after-hours establishment license shall make application to the director who shall refer such application to the chief of police and community development manager and any other department for appropriate investigation. The application shall be in such form as prescribed by the director and shall be fully completed before processing by the director. The application must be submitted at least sixty (60) days prior to the proposed date of providing any after-hours activity.
- (b) The completed application shall include a description of the proposed after-hours activity and shall include, but

not be limited to the following information set forth in this subsection. Items 1-11 below are required to be completed about the applicant; the business owner; the licensee if not the applicant or the business owner; the agent responsible for managing the after-hours activities on a day to day basis, (hereinafter, "Managing Agent"); and any controlling person as defined herein. The application is not considered complete until all required items, (1-27), are submitted to the director:

- (1) The business name, location, phone number and business mailing address of the proposed after-hours establishment;
- (2) Full legal name and any name by which the person is or has been known;
- (3) Current home address and telephone number and addresses over the past five (5) years;
- (4) Driver's license number or State of Arizona identification license number;
- (5) Social security number or equivalent;
- (6) Date of birth, height, weight, hair and eye color;
- (7) Business occupation and employment history for the last five (5) years
- (8) License history, including issuance, revocation, suspension or termination of any current or past state liquor licenses, the liquor license number and managing agent; permits; professional or business license;
- (9) Fingerprints, if not taken at the office of the director, shall be taken by a law enforcement agency and accompanied by a notarized verification by that agency;

- (10) Listing of any felony or misdemeanor convictions (except minor, civil traffic violations), received within the past five (5) years;
- (11) Documentation of age over eighteen (18) years;
- (12) Designation of the managing agent who will be managing or operating the after-hours activity at the indicated location and proof of the managing agent's authorization to act on behalf of any corporation or organization;
- (13) If a corporation, the articles of incorporation and a certificate of good standing, or certificate of authority to transact business if a foreign corporation. If a partnership, either the partnership agreement or limited liability statement, and the certificate of existence. For limited and limited liability partnerships;
- (14) Name, address and telephone number of the statutory agent in Arizona and any local agent authorized to conduct daily business and proof of authority to act on behalf of the prospective licensee;
- (15) Except for corporations listed on the major stock exchanges, the names and addresses of all persons financially interested in the business. If a person financially interested in the business of the prospective licensee is a corporation, the names and addresses of all persons financially interested in that corporation shall be provided;
- (16) The names and addresses of any controlling persons as defined herein. If the controlling person is a corporation, the names and addresses of all persons having control of the controlling corporation shall be provided;

- (17) A plan of operation which complies with the requirements of Section 16-586(b);
- (18) Evidence of current, valid privilege license issued by the city;
- (19) Evidence of a current, valid use permit or any other applicable zoning approval for the proposed activity issued by the city;
- (20) Legal description and location of the premises and lot where the proposed activity will take place, submitted on a map, drawn to scale, at least eight and one-half by eleven inches, showing the dimensions of the property and the name and width of all internal and abutting streets, roads or alleys, any existing buildings, fences and easements, with distances to property lines;
- (21) Floor plan containing an accurate drawing to scale depicting the interior plan and layout of the premises, including all doors, exits and entrances service windows, rest rooms and storage areas;
- (22) A vicinity ownership map showing and labeling all buildings and parking lots within three hundred feet (300') of the exterior boundaries of the lot on which the establishment is located. The three hundred feet (300') measurement shall include any public property or public rights-of-way;
- (23) A vicinity ownership list, and mailing labels properly addressed, containing names and mailing addresses, with correct zip codes, of owners of all parcels required to be shown on the vicinity ownership map. The owners shall be as shown on the last assessment of the property by the county;

- (24) A complex/center tenant list, and mailing label properly addressed, containing names and mailing addresses, with correct zip codes, of tenants which share the site with the proposed licensee as to use of common points of ingress and egress or common parking areas of facilities;
 - (25) A written agreement with any property owner whose property, including parking lot may be used by patrons of the after-hours establishment. This agreement shall include the actual address of the property, mailing address of the owner and the dimensions and proposed use of the property;
 - (26) Such other information as may be requested by the director to determine the truth of the information required to be set forth above.
- (c) Any change in ownership of the business or in the information required to be provided in Paragraphs (1), (2), (12), (13), (14), or (21), above shall be reported to the director within ten (10) calendar days after the change. Such changes shall be subject to investigation and approval by the director. The director may disapprove if such changes result in the after-hours establishment not meeting all requirements of this article and all applicable provisions of the city code or law. If disapproved, the disapproval shall be grounds for termination of the license as provided in the grounds for termination section of this code. The requirement for reporting changes as required herein is effective at all times during the city's consideration of the application and at all times when a license issued thereunder is in effect. This applies to all licensing authorities. All other information set out above must be updated at the time of the renewal of the license.
- (d) Any change in the plan of operation in Section (b)(17) above must be approved by the city prior to the change becoming effective. Failure to comply with an approved plan of operation shall constitute grounds for termination

of the license as provided in the grounds for termination section of this code.

- (e) The police department shall conduct an investigation of the application and background of the applicant, managing agent and proposed licensee. Based on such investigation, the police department shall recommend to the director the approval or denial of the license. In addition, the code enforcement unit, police and fire department or any other affected department, may inspect any premises proposed as the site of the establishment and may make separate recommendations to the director concerning compliance with the provisions of this article and applicable codes. The director shall make the decision as to issuance or denial of the license, including any conditions applicable to the license or licensee. Appeal of the denial of a license application shall be made pursuant to the procedures set forth in Sections 16-10 through 16-12 of this chapter.
- (f) The director shall not consider any application in which:
 - (1) Misrepresentations or material misstatements are made in the application;
 - (2) The applicant is in arrears paying city or state business taxes or licensing fees;
 - (3) A business owner, managing agent, applicant, other managing employee, licensee, if not the applicant or a controlling person in the business to be licensed has been convicted of a felony within the past five (5) years; or a misdemeanor which relates to the activity to be licensed within the past five (5) years. Or has, within two (2) years preceding the date of the issuance of a license, violated any of the provisions of this article or the city code while conducting an after-hours activity or establishment.

- (4) The director has reasonable grounds to believe that the licensee or controlling person knowingly associates with a person who has engaged in racketeering, as defined in ARS Section 13-2301.

SEC. 16-579. APPLICATION, LICENSE, AND FINGERPRINTING FEES, DUPLICATE LICENSE.

- (a) The application shall be accompanied by a non-refundable application fee of five hundred dollars (\$500.00).
- (b) The license fee shall be five hundred dollars (\$500.00) per year.
- (c) A fee of twenty five dollars (\$25.00) shall be paid at the time of fingerprinting for each set of fingerprints to be provided for by the director under section 16-578(b)(9).
- (d) A duplicate license shall be issued by the director upon payment of ten dollars (\$10.00).

The annual license fee for an initial license may be pro-rated to not less than one-quarter of the calendar year if the proposed licensee will be open for business on a seasonal or quarterly basis. License fees are due and payable prior to commencement of the activity for which this license is required.

SEC. 16-580. FINDINGS.

An application for an after-hours establishment license shall not be approved unless the director finds:

- (1) The applicant, and the proposed conduct of the after-hours activity, meet all requirements of this article and all applicable provisions of the city code or law;

- (2) No harm to the public health, safety or welfare of the community, would result from granting the license.

SEC. 16-581. DISPLAY OF LICENSE.

A licensee shall display such license in a conspicuous place, readily available for inspection, in the after-hours establishment.

SEC. 16-582. TRANSFERABILITY, AUTOMATIC TERMINATION OF LICENSE.

- (a) Licenses are not transferable.
- (b) The following shall result in automatic termination of an after-hours establishment license:
 - (1) Any change in location of a licensed after-hours establishment;
 - (2) The sale or transfer of fifty percent, (50%) or more of the stock or ownership of the after-hours establishment; or;
 - (3) The revocation or termination of any use permit or other zoning approval issued by the city relating to any activity occurring at the after-hours establishment.

A new application may be made by the person whose license is terminated as provided in this section, or by another person desiring to own or operate an after-hours establishment.

SEC. 16-583. RENEWAL, APPEALS FROM DENIAL.

- (a) Annually, at least thirty (30) days prior to the first day of January of each year, a licensed after-hours establishment shall apply to the director for renewal of the after hours establishment license. No renewal of an existing license shall be accepted after December 2nd of the current license year. Application shall be made and reviewed as an original application except that no application fee is payable on a renewal application.
- (b) Appeals from the denial of a renewal license application shall be made pursuant to the procedures set forth in Sections 16-10 through 16-12 of this chapter.

SEC. 16-584. GROUNDS FOR REVOCATION, HEARING ON REVOCATION.

- (a) The director may initiate license revocation proceedings in accordance with the procedures for, and upon any of the grounds for revocation, stated in Article I of this chapter, and for any of the following additional grounds:
 - (1) The licensee has engaged in fraud in conducting the business;
 - (2) The licensee, managing agent, controlling person, or other managing employee has been convicted in a court of competent jurisdiction of any felony, or of any misdemeanor which relates to the licensed activity;
 - (3) The licensee has engaged in untrue, fraudulent, misleading or deceptive advertising;
 - (4) The licensee is grossly negligent in the conduct of business of the after-hours establishment;

- (5) The licensee has violated any of the provisions of the applications section, the requirements for operation of establishment section or the unlawful activities section of this code; or any other provisions of this code or the city code;
- (6) The licensee fails to comply with the terms of the plan of operation as approved by the city;
- (7) There occurs on the premise or adjacent to or in a parking lot used by patrons of the after hours establishment, repeated acts of violence, disorderly conduct or other criminal activity;
- (8) The licensee or any managing agent, controlling person, or managing employee thereof fails or refuses to make the premises or records available for inspections and examination as provided in this article;
- (9) The licensee knowingly files an application or other document with material information which is false or misleading or knowingly gives testimony in an investigation or other proceeding which is false or misleading;
- (10) The licensee is delinquent for more than ninety (90) days in the payment of any applicable taxes to the city;
- (11) The licensee fails to take reasonable steps to protect the safety of a customer of the licensee entering, leaving or remaining on the licensed premises when the licensee knew or should have known of the danger to such person, or the licensee fails to take reasonable steps to intervene by notifying law enforcement officials or otherwise to prevent or break up an act of violence or an altercation occurring on the licensed premises or on premises subject to the security plan when the

licensee knew or reasonably should have known of such acts of violence or altercations;

- (12) An unreasonable and disproportionate use of police resources on a consistent basis is required at the after-hours location or within the area governed by the licensee's security plan;
 - (13) The licensee, managing agent, controlling person or other managing employee fails to assist law enforcement or emergency services personnel during a criminal investigation involving violence in or near the licensed premises, or, they provide false or misleading statements during such investigation;
 - (14) The licensee, his managing agent, a controlling person or other managing employee knowingly associates with a person who has engaged in racketeering, as defined in ARS 13-2301, or has been convicted of a felony and the association is of such a nature to create a reasonable risk that the licensee will fail to conform to the requirements of this article or any criminal statute of this state; or
 - (15) Any enlargement or expansion of the premises or of the after-hours activity without appropriate approvals from the city.
- (b) Revocation of a license shall adhere to the notice, hearing, and appeal provisions in Article I of this chapter.
 - (c) The director may immediately suspend a license for an after-hours establishment if the director has reasonable grounds to believe that continued operation of the establishment presents imminent danger to the public health, safety or welfare of the community.
- (1) The director shall give the licensee written notice of the suspension, which notice shall include a statement of the grounds relied upon for the suspension. Within ten (10) working days of the

effective date of the suspension, the director shall schedule and hold a hearing to determine whether the suspension should continue, the reasons for such continuance, and what conditions must be met in order to reinstate the license. The director shall send notification to the licensee in writing by certified mail of the date, time and place of the hearing.

- (2) The hearing shall be conducted in an informal manner. The licensee may be represented by counsel. The rules of evidence shall not apply. The director shall render a written decision within five (5) working days after the completion of the hearing and shall mail a copy of the decision by certified mail to the address of the licensee on file with the director. The decision of the director shall be effective when notice is given to the licensee.
- (3) An aggrieved party may appeal the decision of the director pursuant to the procedures set forth in Sections 16-10 through 16-12 of this chapter. The decision made by the general manager shall constitute final administrative action by the city.

SEC. 16-585. APPLICATION AFTER DENIAL OR TERMINATION.

No person may apply for an after-hours establishment license within one year from:

- (1) The denial of any such license to the applicant, or
- (2) The revocation, termination or non-renewal of such license unless the cause of the revocation, termination, or non-renewal of such license has been, to the satisfaction of the director, removed in such time.

SEC. 16-586. REQUIREMENTS FOR OPERATION OF ESTABLISHMENT, PLAN OF OPERATION REQUIRED.

- (a) An after-hours establishment shall comply with this article and all applicable city and state laws and ordinances, including but not limited to fire, building and zoning codes. In addition, the following requirements apply:
 - (1) The hours during which the after-hours establishment may be open to conduct after-hours activity shall be 1:00 a. m. To 6:00 a.m.;
 - (2) Persons under eighteen (18) years of age are prohibited in an after-hours establishment.
 - (3) Written proof of identification shall be required for admission to an after-hours establishment to ensure compliance with Paragraph two (2) of this section. The following written instruments are the only acceptable types of identification:
 - a. A valid driver's license issued by any state, provided such license includes a picture of the licensee;
 - b. An identification license issued pursuant to Arizona state law;
 - c. A valid armed forces identification card with a photo;
 - d. A valid passport issued by a government, which contains a photograph of the person and their date of birth;
 - (4) No person shall be admitted to, nor shall any person be allowed to remain on the licensed

premises who is or appears to be under the influence of spirituous liquor or drugs or who is disorderly;

- (5) No spirituous liquor may be furnished, sold or served at an after-hours establishment between 1:00 a.m. and 6:00 a.m. If the after-hours licensee holds a liquor license from the state, spirituous liquor service and consumption must terminate upon the hours as required by state law;
 - (6) Admittance and any admittance lines for entry to the establishment shall be closed at 2:00 a.m.;
 - (7) Any parking used by patrons of the licensee, and any parking area of the licensee or within three hundred feet (300') of the exterior boundaries of the lot on which the licensed premises is located shall be supervised by the licensee to ensure that the parking areas are used by persons entering and exiting from their vehicles and are not used as a gathering place;
 - (8) Other regulations and conditions to protect the public health and welfare may be required for a licensee as the director deems necessary.
- (b) A plan of operation which demonstrates how the licensee will ensure compliance with these regulations shall accompany the application and is subject to approval by the city. Any change in the plan of operation once approved must be submitted to the city for approval thirty (30) days prior to the change becoming effective as provided in the application section of this code. A copy of the current plan of operation shall be available at the after-hours establishment for inspection by the city during business hours and at other reasonable times. The plan shall include such information as required by the director, including the security plan, identification of employees, agents or private contractors who are responsible for

security and ensuring compliance with the terms of this article.

SEC. 16-587. UNLAWFUL ACTIVITIES.

It is unlawful for any person or licensee at an after-hours establishment to:

- (1) Operate without any required city or state permit or in violation of any applicable city or state law or ordinance;
- (2) Admit person under eighteen (18) years of age;
- (3) Serve spirituous liquor or permit the consumption thereof at an after-hours establishment when prohibited in this article or state law;
- (4) Employ any person who is under eighteen (18) years of age to work during the hours between 12:00 a.m. and 6:00 a.m.;
- (5) Allow an intoxicated or disorderly person to come onto or remain on the licensed premises, except that an intoxicated person may remain on the premises for no longer than thirty (30) minutes to arrange for transportation;
- (6) Solicit or encourage, or allow an employee to solicit or encourage, to buy a patron anything of value, directly or indirectly, or for a patron to solicit or encourage to buy an employee anything of value, directly or indirectly;
- (7) Knowingly permit unlawful possession, use, or sale of narcotics, dangerous drugs or marijuana on the licensed premises;

- (8) Knowingly permit prostitution or solicitation of prostitution on the licensed premises;
- (9) Knowingly permit unlawful gambling on the licensed premises;
- (10) Knowingly permit trafficking in stolen property on the licensed premises;
- (11) Knowingly permit the possession of a dangerous instrument or deadly weapon, on the licensed premises by customers or failing to take reasonable steps to prohibit the possession of dangerous instruments or deadly weapons on the premises;
- (12) Fail or refuse to make the premises or records, or the plan required in the requirements for operation of establishment section of this code, available for inspection as provided in this article; or
- (13) Employ or permit a person to be employed on a salary, contract or commission basis for the purpose of dancing with patrons, except that this shall not apply to bona fide instructors of dancing regularly employed for the exclusive purpose of giving bona fide instructions for dancing.

SEC. 16-588. OTHER REGULATIONS.

A license or permit required by this article is in addition to any other permits required by the city, county or the state to engage in the business or occupation. Persons engaging in activities described in this article shall comply with all other ordinances and laws, including the city zoning ordinance, as may be required, to engage in a business or profession.

SEC. 16-589. INVESTIGATION TO DETERMINE VIOLATION, REQUESTS FOR INVESTIGATION.

The police department or the director or any of their agents may, in enforcing the provisions of this article, enter the premises of an after-hours establishment or where an after-hours activity takes place and may attend, witness, visit and investigate any and all of the after-hours activities and any other activities therein and thereon. In addition, the police department or the director or their agents may inspect the after-hours establishment or the building and premises in which after hours activities are carried on, while the premises are occupied, to determine whether or not there exist any violations of this article or the city code. The police department or director may request any other department of the city to make an investigation to determine whether or not the after-hours activity is being operated in compliance with this article and ordinances of the city.

SEC. 16-590. PENALTY, IMMEDIATE CLOSURE, CIVIL SANCTIONS.

- (a) A violation of this article is an offense, punishable by a fine of five hundred dollars (\$500.00) or thirty days imprisonment or both such fine and imprisonment. Each day on which a violation continues shall be a separate offense.
- (b) In addition to the punishments provided in this section, a violation of this ordinance is grounds for revocation or suspension of the license as provided in the grounds for termination section of this code.
- (c) The chief of police or his designee (a sworn supervisor serving as watch commander or higher) has the right in those situations where there is an immediate need to avoid injury or harm to the public to close any after-hours establishment for the duration of such situation. The

determination of the need to close an after-hours establishment shall be based upon a need for immediate action to avoid public harm and is within the sole discretion of the police chief or his designee (a sworn supervisor serving as watch commander or higher).

SEC. 16-591. SEVERABILITY.

Each section and each provision of any section of this article shall be deemed severable and the invalidity of any portion of this article shall not affect the validity or enforceability of any other portion.

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